



JGJr: 01-02

Paper No. 6

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OFFICE OF PETITIONS

In re Application of
Xie, et al.
Application No. 09/964,494
Filed: 28 September, 2001
Attorney Docket No. 219.40430X00

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: **DECISION GRANTING PETITION**
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This is a decision on the petition filed on 21 December, 2001, styled "Petition Under 37 C.F.R. §1.53(e)," requesting that the Figure 8, as described in the specification, be accorded a filing date of 28 September, 2001.

The petition is **GRANTED**.¹

The application was deposited on 28 September, 2001, and the record contains the transmittal sheet indicating that the papers to be submitted included "4. X Drawings (35 U.S.C 113) [Total; Sheets 7]," however, a review of the application indicated that Figure 8, as described in the specification, was absent from the application.

The Office mailed on 25 October, 2001, a "Notice of Missing Parts," (filing date granted):

- requiring the filing of the oath/declaration with late-filing surcharge; and
- noting therein that Figure 8, as described in the specification, appeared to be omitted from the application.

The Notice further indicated that the Applicant must respond within two months of the Notice mail date.

Petitioner filed a response on 21 December, 2001, with the instant petition, and provided therein copies of: the Notice of Missing Parts, as required; the Office-stamped filing receipt card

¹ Pursuant to Petitioner's authorization, the \$130.00 petition fee is refunded and credited to Deposit Account 01-2135.

indicating thereon receipt of, *inter alia*: "7 Sheets of Formal Drawings"; copies of the drawings alleged to have been deposited on 28 September, 2001, and authorization to charge the petition fee.

Petitioner also draws attention in the petition to the facts that:

- Figure 8 is contained on the same sheet of drawings as Figure 9; and
- the caption "Fig. 8" is high on the page above the drawing.

A review of the application papers reveals that prior to the instant petition the record contained 7 sheets of drawings, none of which is a duplicate of another, and one of which contains both Figure 8 and Figure 9, and the caption "Fig. 8" is high on the page and apparently hidden by the post binding the drawings into the file.

Because:

- the return postcard receipt properly itemizes the contents of the application package in accordance with MPEP §503,
- the page containing the drawing now identified as "Fig. 8," also contains the drawing previously identified as "Fig. 9," and
- the record contained 7 sheets of drawings, none of which is a duplicate of another, and one of which contains both Figure 8 and Figure 9, and the caption "Fig. 8" is high on the page and apparently hidden by the post binding the drawings into the file,

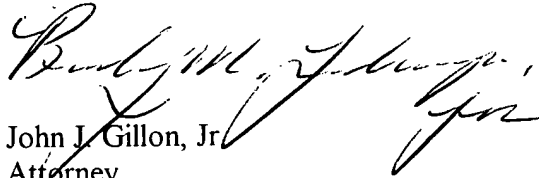
the Office concludes that the Figure 8 was filed on 28 September, 2001.

Accordingly, the petition is **granted**.

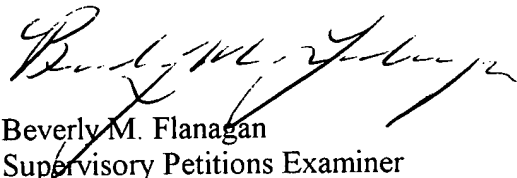
The statement that Figure 8 appeared to have been omitted from the Application, as contained in the Notice of Missing Parts mailed on 25 October, 2001, hereby is withdrawn.

This application is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of 28 September, 2001, using the seven (7) sheets of drawings filed on 28 September, 2001, with an indication on the PALM bib data sheet that Figure 8 of the drawings was present on filing.

Telephone inquiries concerning this matter may be directed to John J. Gillon, Jr., Attorney, Office of Petitions, at (703)305-9199.



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